

EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARISTA RECORDS LLC; ATLANTIC
RECORDING CORPORATION; BMG MUSIC;
CAPITOL RECORDS, INC.; ELEKTRA
ENTERTAINMENT GROUP INC.; INTERSCOPE
RECORDS; LAFACE RECORDS LLC;
MOTOWN RECORD COMPANY, L.P.;
PRIORITY RECORDS LLC; SONY BMG MUSIC
ENTERTAINMENT; UMG RECORDINGS, INC.;
VIRGIN RECORDS AMERICA, INC.; and
WARNER BROS. RECORDS INC.,

Plaintiffs,

v.

LIME WIRE LLC; LIME GROUP LLC; MARK
GORTON; GREG BILDSON, and M.J.G. LIME
WIRE FAMILY LIMITED PARTNERSHIP,

Defendants.

ECF CASE

FIRST AMENDED COMPLAINT FOR
FEDERAL COPYRIGHT
INFRINGEMENT, COMMON LAW
COPYRIGHT INFRINGEMENT,
UNFAIR COMPETITION,
CONVEYANCE MADE WITH
INTENT TO DEFRAUD AND
UNJUST ENRICHMENT

06 Civ. 05936 (GEL)

Plaintiffs hereby allege on personal knowledge as to allegations concerning themselves, and on information and belief as to all other allegations, as follows:

NATURE OF THE ACTION

1. Plaintiffs are record companies that produce, manufacture, distribute, sell, and license the vast majority of commercial sound recordings in this country. Defendants' business, operated under the trade name "LimeWire" and variations thereof, is devoted essentially to the Internet piracy of Plaintiffs' sound recordings. Defendants designed, promote, distribute, support and maintain the LimeWire software, system/network, and related services to consumers for the well-known and overarching purpose of making and distributing unlimited copies of Plaintiffs' sound recordings

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without paying Plaintiffs anything. Plaintiffs bring this action to stop Defendants' massive and daily infringement of Plaintiffs' copyrights.

2. The scope of infringement caused by Defendants is staggering. Millions of infringing copies of Plaintiff's sound recordings have been made and distributed through LimeWire — copies that can be and are permanently stored, played, and further distributed by LimeWire's users. LimeWire thus substantially replaces the need to *buy* recordings from legitimate retailers and displaces authorized online sales and distribution services, including existing and developing "peer to peer" ("P2P") systems that operate lawfully. Plaintiffs and others have invested and risked tremendous amounts of money, time, and energy to develop these emerging markets. The harm that Defendants cause to these nascent markets, and the damage Defendants cause Plaintiffs every day, are both enormous and obvious.

3. Despite the scope of Defendants' wrongdoing, this case is by now a familiar and straightforward one. The LimeWire software and system, and the actions by which Defendants have built LimeWire into the leader for online infringement of sound recordings today, are essentially the same as those establishing copyright infringement liability in the *Napster*, *Aimster*, *Grokster*, and other pirate P2P cases already decided in Plaintiffs' favor by federal courts — including, most recently, the United States Supreme Court.¹ Nevertheless, Defendants have continued to promote, market, and distribute LimeWire as the successor-in-infringement to these pirate services. Like their

¹ *A & M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (9th Cir. 2001); *In re Aimster Copyright Litig.*, 334 F.3d 643 (7th Cir. 2003); *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 125 S. Ct. 2764 (2005).

predecessors, Defendants should be ordered to cease their continuing unlawful actions, and they should be held accountable for the massive damage they have already caused.

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JURISDICTION AND VENUE

5. This is a civil action seeking injunctive relief and damages for copyright infringement under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and for unfair competition and common-law copyright infringement under New York law with respect to Plaintiffs' sound recordings fixed prior to February 15, 1972.

6. The Court has original subject matter jurisdiction over the Copyright Act claims pursuant to 28 U.S.C. §§ 1331 and 1338(a), and the state law and common law claims pursuant to 28 U.S.C. §§ 1338(b) and 1367(a).

7. The Court has personal jurisdiction over the Defendants because each resides and/or may be found in New York, does systematic and continuous business in New York, and has performed acts directed at and causing harm in New York which give rise to this Complaint.

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8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), (c) and 28 U.S.C. §1400(a).

THE PLAINTIFFS AND THEIR BUSINESS

9. Plaintiffs, well-known and respected record companies, are in the business of producing, manufacturing, distributing, selling, licensing, and facilitating the distribution and sale of sound recordings (*i.e.*, recorded music) in the United States. The considerable artistic and technical quality of Plaintiffs' sound recordings are known in the State of New York, and throughout the United States and the world.

10. Plaintiff Arista Records LLC is a limited liability company duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

11. Plaintiff Atlantic Recording Corporation is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

12. Plaintiff BMG Music is a general partnership duly organized and existing under the laws of the State of New York, with its principal place of business in the State of New York.

13. Plaintiff Capitol Records, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

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14. Plaintiff Elektra Entertainment Group Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

15. Plaintiff Interscope Records is a general partnership duly organized and existing under the laws of the State of California, with its principal place of business in the State of California.

16. Plaintiff LaFace Records LLC is a limited liability corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

17. Plaintiff Motown Record Company, L.P. is a limited partnership duly organized and existing under the laws of the State of California, with its principal place of business in the State of New York.

18. Plaintiff Priority Records LLC is a limited liability company with its principal place of business in the State of California.

19. Plaintiff SONY BMG MUSIC ENTERTAINMENT is a general partnership duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

20. Plaintiff UMG Recordings, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California.

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21. Plaintiff Virgin Records America, Inc. is a corporation duly organized and existing under the laws of the State of California, with its principal place of business in the State of New York.

22. Plaintiff Warner Bros. Records Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California.

23. Plaintiffs are the copyright owners or owners of exclusive rights (by way of agreement) with respect to the vast majority of copyrighted sound recordings sold in the United States. Under the Copyright Act, Plaintiffs have, *inter alia*, the exclusive rights to “reproduce the copyrighted work[s],” to “distribute copies or phonorecords of the copyrighted work[s] to the public,” to perform publicly the copyrighted works by means of digital transmission, and to authorize or license any such activities. 17 U.S.C. §§ 106(1), (3), (6).

24. Additionally, Plaintiffs have entered into various agreements by which they obtained the common-law copyright rights in sound recordings embodying certain musical performances which were initially “fixed” prior to February 15, 1972 (the “Pre-1972 Recordings”) and therefore are subject to protection under state rather than federal copyright law. 17 U.S.C. § 301(c). Pursuant to these agreements and New York State common law, Plaintiffs possess, *inter alia*, the exclusive rights to manufacture, distribute, and sell these recordings.

25. Plaintiffs manufacture, distribute, license, and sell phonorecords (*i.e.*, the material objects containing recorded music) in the form of CDs, cassettes and other

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tangible media. Plaintiffs also distribute, license, and sell their sound recordings in the form of digital audio files delivered or performed via the Internet. The Internet now features a substantial number of legitimate avenues for the sale and digital distribution of music, including Apple's iTunes, Rhapsody, AOL Music, Yahoo! Music, Walmart.com, Napster and others. Some of these services even use P2P technology like Defendants — but unlike Defendants, they operate lawfully and pay Plaintiffs for sound recordings that they distribute. Other services are emerging.

26. Plaintiffs have invested and continue to invest significant money, time, effort, and creative talent to discover and develop recording artists, and to create, manufacture, advertise, promote, sell, and license sound recordings embodying their performances. Plaintiffs, their employees, their recording artists, and others in the music industry are compensated for their creative efforts and monetary investments largely from the sale and distribution of sound recordings to the public, including the authorized online sale and distribution described above.

27. Attached as Exhibit A is a non-exhaustive, exemplary list of over 3,000 of Plaintiffs' sound recordings that have been copied, publicly distributed, and/or publicly performed without Plaintiffs' authorization, through the conduct described in this Complaint. The copyright in each of these sound recordings is registered in the United States Copyright Office. 17 U.S.C. §§ 409-412.

28. Attached as Exhibit B is a non-exhaustive, exemplary list of Pre-1972 Recordings in which Plaintiffs hold exclusive rights under New York law and which have

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been copied and/or publicly performed without Plaintiffs' authorization, through the conduct described in this Complaint.

THE DEFENDANTS

29. Defendants design, build, promote, distribute, sell, and support software and related services under the "LimeWire" name and variations thereof.

30. Defendant Lime Group LLC is a Delaware limited liability corporation with its principal place of business in New York, New York.

31. Defendant Lime Wire LLC is a Delaware limited liability corporation with its principal place of business in New York, New York, and is a wholly-owned subsidiary of defendant Lime Group LLC, with which it shares offices and officers/employees. Lime Wire LLC and Lime Group LLC directly and indirectly designed LimeWire and update, improve, promote, distribute and market LimeWire.

32. Defendant M.J.G. Lime Wire Family Limited Partnership is a Nevada limited partnership, which operates under the control of its general partner Mark Gorton. Defendant M.J.G. Lime Wire Family Partnership was designed and developed to further defendants' unlawful actions and to protect defendants' ill-gotten gains.

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33. At all times relevant to this action, defendant Lime Group LLC has had exclusive and complete domination and control over defendant Lime Wire LLC, such

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that Lime Wire LLC is its alter ego and mere instrumentality. There is a substantial and continuing connection between Lime Group LLC and Lime Wire LLC with respect to the actions complained of herein.

34. Defendant Mark Gorton is a principal and the Chief Executive Officer of defendant Lime Wire LLC. He is also a member and the Chief Executive Officer of defendant Lime Group LLC and a general partner in M.J.G. Lime Wire Family Limited Partnership. Mr. Gorton is the dominant influence in Lime Group LLC and M.J.G. Lime Wire Family Limited Partnership, and, along with Defendant Greg Bildson, in Lime Wire LLC. Mr. Gorton has been personally and substantially involved in and profits greatly from the design, promotion, marketing and distribution of LimeWire.

35. Defendant Greg Bildson is the Chief Technology Officer and Chief Operating Officer of defendant Lime Wire LLC. Along with Defendant Mark Gorton, Mr. Bildson is the dominant influence in defendant Lime Wire LLC and has been personally and substantially involved in and profits greatly from the design, promotion, marketing and distribution of LimeWire.

36. At all times relevant to this action, defendants Mark Gorton and Greg Bildson have, in both their corporate and personal capacities, participated in and caused Lime Wire LLC and Lime Group LLC to participate in the acts complained of herein. Both Gorton and Bildson have each, for example, (i) participated in the design, promotion, marketing and distribution of LimeWire and had the right and ability to supervise others taking those actions, (ii) possessed policy-making authority and control over Lime Wire LLC and direct supervisory responsibility over Lime Wire LLC's

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employees, (iii) been aware of, personally overseen or directed, and approved of the actions complained of herein, and (iv) made public statements that have encouraged, facilitated and induced copyright infringement of Plaintiffs' sound recordings through LimeWire.

37. The design, promotion, marketing and distribution of LimeWire are the result of decisions and actions that have been made jointly among the Defendants.

38. At all times relevant to this action, each of the Defendants is and was a party to the unlawful actions complained of, and acted in concert or combination with each of the other Defendants and/or has acted as an agent for each of the other Defendants with respect to the actions and matters described in this Complaint.

BACKGROUND DESCRIPTION OF THE ILLEGAL CONDUCT

39. Beginning in or around August 2000, and continuing through today, Defendants have designed, promoted, marketed, distributed, sold, supported, and maintained the software and network system known as "LimeWire." LimeWire, like similar systems that preceded it, such as Napster, Aimster, Kazaa, and Grokster, is an online tool for infringement. Indeed, Defendants have taken steps to attract users to LimeWire from other infringing services through, *inter alia*, advertisements and comparative public statements. Those efforts have succeeded in large part — LimeWire has now become the leading P2P software for infringing Plaintiffs' sound recordings.

40. LimeWire is, from a bare technical standpoint, a "peer to peer filesharing" (P2P) program and network that connects individual computer users via the Internet, and allows them to transfer files from one user's hard drive to another's. The LimeWire

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